

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 BARBARA HUBBARD,) Civil No. 09-1581-JLS(WVG)
12)
13 Plaintiff,) ORDER AFTER ORDER TO
14) SHOW CAUSE HEARINGS
15 v.)
16)
17 PLAZA BONITA, L.P., et al.,)
18)
19 Defendants.)
20)
21)
22)
23)
24)
25)
26)
27)
28)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18 I
19

20 PROCEDURAL BACKGROUND
21

22 On July 22, 2009, Plaintiff Barbara Hubbard (hereafter
23 "Plaintiff" or "Barbara"), filed a Complaint against the Plaza
24 Bonita Shopping Center, and most, if not all, of the tenants at the
25 shopping center.^{1/} The Complaint alleges that all of the named
26 Defendants violated the Americans With Disabilities Act (hereafter
27 "ADA").
28

29 After the Complaint was filed, Plaintiff settled her action
30 with numerous named Defendants. On February 25, 2010, the Court

31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189
1190
1191
1192
1193
1194
1195
1196
1197
1198
1199
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1290
1291
1292
1293
1294
1295
1296
1297
1298
1299
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1320
1321
1322
1323
1324
1325
1326
1327
1328
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1400
1401
1402
1403
1404
1405
1406
1407
1408
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1430
1431
1432
1433
1434
1435
1436
1437
1438
1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1450
1451
1452
1453
1454
1455
1456
1457
1458
1459
1460
1461
1462
1463
1464
1465
1466
1467
1468
1469
1470
1471
1472
1473
1474
1475
1476
1477
1478
1479
1480
1481
1482
1483
1484
1485
1486
1487
1488
1489
1490
1491
1492
1493
1494
1495
1496
1497
1498
1499
1500
1501
1502
1503
1504
1505
1506
1507
1508
1509
1510
1511
1512
1513
1514
1515
1516
1517
1518
1519
1520
1521
1522
1523
1524
1525
1526
1527
1528
1529
1530
1531
1532
1533
1534
1535
1536
1537
1538
1539
1540
1541
1542
1543
1544
1545
1546
1547
1548
1549
1550
1551
1552
1553
1554
1555
1556
1557
1558
1559
1560
1561
1562
1563
1564
1565
1566
1567
1568
1569
1570
1571
1572
1573
1574
1575
1576
1577
1578
1579
1580
1581
1582
1583
1584
1585
1586
1587
1588
1589
1590
1591
1592
1593
1594
1595
1596
1597
1598
1599
1600
1601
1602
1603
1604
1605
1606
1607
1608
1609
1610
1611
1612
1613
1614
1615
1616
1617
1618
1619
1620
1621
1622
1623
1624
1625
1626
1627
1628
1629
1630
1631
1632
1633
1634
1635
1636
1637
1638
1639
1640
1641
1642
1643
1644
1645
1646
1647
1648
1649
1650
1651
1652
1653
1654
1655
1656
1657
1658
1659
1660
1661
1662
1663
1664
1665
1666
1667
1668
1669
1670
1671
1672
1673
1674
1675
1676
1677
1678
1679
1680
1681
1682
1683
1684
1685
1686
1687
1688
1689
1690
1691
1692
1693
1694
1695
1696
1697
1698
1699
1700
1701
1702
1703
1704
1705
1706
1707
1708
1709
1710
1711
1712
1713
1714
1715
1716
1717
1718
1719
1720
1721
1722
1723
1724
1725
1726
1727
1728
1729
1730
1731
1732
1733
1734
1735
1736
1737
1738
1739
1740
1741
1742
1743
1744
1745
1746
1747
1748
1749
1750
1751
1752
1753
1754
1755
1756
1757
1758
1759
1760
1761
1762
1763
1764
1765
1766
1767
1768
1769
1770
1771
1772
1773
1774
1775
1776
1777
1778
1779
1780
1781
1782
1783
1784
1785
1786
1787
1788
1789
1790
1791
1792
1793
1794
1795
1796
1797
1798
1799
1800
1801
1802
1803
1804
1805
1806
1807
1808
1809
1810
1811
1812
1813
1814
1815
1816
1817
1818
1819
1820
1821
1822
1823
1824
1825
1826
1827
1828
1829
1830
1831
1832
1833
1834
1835
1836
1837
1838
1839
1840
1841
1842
1843
1844
1845
1846
1847
1848
1849
1850
1851
1852
1853
1854
1855
1856
1857
1858
1859
1860
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041
2042
2043
2044
2045
2046
2047
2048
2049
2050
2051
2052
2053
2054
2055
2056
2057
2058
2059
2060
2061
2062
2063
2064
2065
2066
2067
2068
2069
2070
2071
2072
2073
2074
2075
2076
2077
2078
2079
2080
2081
2082
2083
2084
2085
2086
2087
2088
2089
2090
2091
2092
2093
2094
2095
2096
2097
2098
2099
2100
2101
2102
2103
2104
2105
2106
2107
2108
2109
2110
2111
2112
2113
2114
2115
2116
2117
2118
2119
2120
2121
2122
2123
2124
2125
2126
2127
2128
2129
2130
2131
2132
2133
2134
2135
2136
2137
2138
2139
2140
2141
2142
2143
2144
2

1 conducted a Settlement Disposition Conference with the remaining
2 Defendants. Lynn J. Hubbard III (hereafter "Plaintiff's counsel"),
3 appeared in person at the conference on behalf of Plaintiff. David
4 Peters appeared in person at the conference on behalf of Defendant
5 Flava Enterprises (hereafter "Flava"). Jonathan Block appeared by
6 telephone at the conference on behalf of Hot Topic. Tony Bucchignani
7 appeared by telephone on behalf of Defendant Westfield America. At
8 that time, Defendants Hot Topic and Westfield America, *inter alia*,
9 had entered into settlement agreements with Plaintiff, but Defendant
10 Flava had not. At the conference, Plaintiff's counsel informed the
11 Court that Plaintiff had passed away on November 13, 2009.^{2/}

12 After the conference, the Court directed Plaintiff's counsel
13 to file a Notice of Death pertaining to Plaintiff, pursuant to
14 Federal Rule of Civil Procedure 25. On March 17, 2010, Plaintiff's
15 counsel filed the Notice of Death of Plaintiff. The Notice states
16 that Plaintiff passed away on November 13, 2009.

17 On March 29, 2010, Plaintiff's counsel filed a Motion to
18 Substitute Barbara with Barbara's surviving husband, Lynn J.
19 Hubbard, II (hereafter "Lynn").^{3/}

20 On May 12, 2010, Plaintiff's counsel filed an Ex Parte Motion
21 to Dismiss this action as to the remaining Defendant Flava. On June
22 1, 2010, Defendant Flava filed an Opposition to the Motion to
23 Dismiss and requested that an Order To Show Cause (hereafter "OSC"),
24

25
26 ^{2/} Flava's counsel received a proposed settlement agreement from
27 Plaintiff's counsel. However, Flava's counsel suspected that someone
28 other than Plaintiff may have signed the proposed settlement
agreement because it was faxed to him on December 9, 2009, nearly a
month after Barbara had died.

^{3/} Plaintiff's counsel was the son of Barbara and Lynn.

1 hearing be held regarding the potential falsification of Barbara's
2 signature, after her death, on the settlement agreement with Flava.

3 On June 2, 2010, the District Judge assigned to this case
4 denied Plaintiff's counsel's Motion to Substitute Barbara with Lynn
5 because, by that time, Lynn had also passed away.^{4/}

6 On June 23, 2010, Flava's Motion for an OSC was granted. The
7 Order Granting the Motion for an OSC directed Plaintiff's counsel to
8 address several topics raised by Flava's Motion. Thereafter,
9 Plaintiff's counsel and Flava filed briefs regarding the issues that
10 the Court directed to be addressed.

11 On June 28, 2010, the District Judge assigned to this case
12 referred the OSC to the undersigned.

13 On October 12, 2010, the Court held a hearing on the OSC.^{5/}
14 Prior to the hearing, Plaintiff's counsel filed his own declaration,
15 supported by four of his other clients, that stated that the

16 standard operating procedure for (Plaintiff's coun-
17 sel) and the Disabled Advocacy Group is for clients
18 to sign a document - it's called '(S)ignature
19 (A)greement' and all it characterizes is basically a
20 special *power of attorney* that allows the Disabled
21 Advocacy Group to execute any kind of settlement
agreement and/or endorse any settlement check or document in connection with the specific lawsuit in question in which the client is being represented... (OSC Hearing Transcript, October 12, 2010 at 12)(emphasis added).^{6/}

22 ^{4/} Plaintiff's counsel informed the Court that on March 31, 2010, Lynn
23 passed away.

24 ^{5/} The original OSC hearing was set for August 24, 2010. However,
25 counsel requested extensions of time to file the requested briefing.
Therefore, the Court rescheduled the OSC hearing to October 12,
2010.

26 ^{6/} The "Signature Agreement" states: "I hereby agree that the Disabled
27 Advocacy Group, APLC has my permission to execute any kind of
settlement agreement and/or endorse any settlement check or document

28 (continued)
in connection with my Americans with Disabilities Act Lawsuit
against [name of defendant(s)]." The Court refers to the "Signature

Pursuant to the Power of Attorney, the Court found that the signature on the Settlement Agreement provided to Mr. Peters on behalf of Flava, was not in fact, the signature of Barbara.(OSC Hearing Transcript, October 12, 2010 at 12).^{2/}

At the hearing, the Court requested that counsel file further briefing on several topics discussed at the hearing. Also, the Court continued the OSC hearing to January 27, 2011. Thereafter, counsel filed the requested further briefing.

On January 27, 2011, the Court held a continued OSC hearing. At the hearing, the Court ordered Plaintiff's counsel to file Supplemental Declarations regarding the authentication of Barbara's signature. On February 10, 2011, the Supplemental Declarations were filed with the Court.

On March 24, 2011, the District Judge assigned to this case denied Plaintiff's Ex Parte Motion to Dismiss without prejudice, pending the issuance of this Order.

II

ISSUES RAISED AT THE OSC HEARING

Agreement as "Power of Attorney" or "POA."

The Power of Attorney signed by Barbara in connection with this action is attached to the Declaration of Lynn Hubbard III in Response to Order To Show Cause, filed August 3, 2010, Exh. D. The Power of Attorney signed by Barbara in connection with another lawsuit, Hubbard v. Otay Ranch Town Center, is attached to the Declaration of Lynn Hubbard III in Response to Order To Show Cause, filed August 3, 2010, Exh. E. The Court notes that the signatures on Exhs. D and E appear to be different.

^{2/} The Court notes that Plaintiff's counsel's Declaration directly contradicts his February 25, 2010 statement to the Court that "Barbara had signed numerous blank settlement agreements (prior to her death)." The February 25, 2010 statement was made during a Settlement Disposition Conference that was not on the record and was not recited under oath.

1 The June 23, 2010 Order directed Plaintiff's counsel to
2 address the following topics:

3 1. Why he should not be required to present to the Court
4 documents and evidence that Plaintiff signed Exh. A,^{8/} attached to
5 Defendant's Supplemental Opposition to Plaintiff's Ex Parte Motion
6 to Dismiss and Request for Order To Show Cause (Doc. #182);

7 2. Why he should not be required to provide to the Court
8 additional known and genuine signatures of Plaintiff;

9 3. Why he should not be required to identify appearances that
10 Plaintiff personally made in this Court and any documents signed in
11 connection with those appearances;

12 4. Why a hearing should not be held as to whether the
13 signatures of Plaintiff in some or all of the settlement agreements
14 in this matter have been falsified, and if so, what actions are
15 appropriate to achieve accountability and deter those who would
16 engage in this conduct;

17 5. Why he should not be sanctioned for vexatious and
18 unreasonable multiplication of legal proceedings for:

19 (a) prolonging the litigation in this matter by
20 demanding settlements involving commitments to make changes to
21 settlement agreements after Plaintiff's death, including provisions
22 in settlement agreements awarding attorneys fees even if the changes
23 were not made;

24 (b) failing to timely disclose to the Court Plaintiff's
25 death;

26
27
28 ^{8/} Exh. A. is identified as containing a purportedly known genuine
signature of Barbara.

1 6. Why his conduct should not be reported to the State Bar of
2 California;

3 7. Why he and his law firm (Law Offices of Lynn Hubbard III,
4 Disabled Advocacy Group, APLC) and the attorneys involved in this
5 matter should not be disqualified from further representation of
6 parties in litigation matters in this Court.

7 A. Plaintiff's Counsel's Factual Response To The OSC

8 On August 3, 2010, in response to the OSC, Plaintiff's
9 counsel described the circumstances under which Barbara signed the
10 settlement agreement with Flava Enterprises:

11 On November 11, 2009, Plaintiff's counsel met with Barbara,
12 who was hospitalized at the time, and told her that she was too
13 frail to continue prosecuting ADA cases. Barbara agreed and told
14 him to settle her last case for whatever he could and give the
15 proceeds to his father (Barbara's husband, Lynn).

16 On November 12, 2009, Plaintiff's counsel instructed his
17 assistant, Kaina Schukei, to offer to settle with Defendant Hot
18 Topic. Hot Topic counter-offered and the counter offer was accepted.

19 On November 13, 2009, Barbara passed away. She did not have
20 a will. Lynn was Barbara's sole beneficiary under California law and
21 could decide what to do with her case. Lynn instructed Barbara's
22 counsel to "finish up" the pending lawsuit.

23 Over the next six weeks, Plaintiff's counsel finalized, or
24 attempted to finalize, settlements with the remaining Defendants in
25 the case. However, neither David Peters (hereafter "Peters"), nor
26 his client Flava, signed the Settlement Agreement and when pressed
27
28

1 to do so, cited Barbara's death^{2/} and his client's unwillingness to
2 make changes to its facility because her lawsuit was moot.

3 On March 15, 2010, David Chamberlin (then employed by
4 Plaintiff's counsel) sent Peters a letter informing Peters that Lynn
5 intended to substitute himself as Plaintiff under Fed. R. Civ. Pro.
6 25(a)(1), and was willing to agree to the original settlement.
7 Peters did not respond.

8 On March 29, 2010, Lynn moved to substitute himself as
9 Plaintiff. However, on March 31, 2010, Lynn passed away.

10 Plaintiff's counsel and his staff immediately asked Peters to
11 stipulate to dismiss the lawsuit because there was no Plaintiff left
12 in the case and no other person to substitute for Plaintiff. Most
13 defense attorneys probably would have jumped at the opportunity to
14 get out of the litigation. However, Peters declined the invitation.

15 Five weeks later, Plaintiff's counsel requested dismissal of
16 this action because the action was moot.

17 B. Flava's Response to Plaintiff's Counsel's Factual Response
18 To The OSC

19 Flava objected to Plaintiff's counsel's recitation of the
20 facts. He asserted that settlement offers which had been made to
21 Flava and Hot Topic had not been accepted prior to Barbara's death.
22 Instead, Flava and Hot Topic filed documents with the Court which
23 show that the offers for settlement were accepted after Barbara's
24 death.

25 The Certificate of Death filed by Plaintiff's counsel states
26 that Barbara passed away on November 13, 2009 at 12:55 PM. On
27 November 13, 2009 at 1:25 PM, Flava's counsel preliminarily accepted

28 ^{2/} Counsel for Flava learned of Barbara's death, not through any
communication initiated by Plaintiff's counsel, but coincidentally
from reading an article in The San Diego Reader newspaper.

1 Plaintiff's counsel's offer for settlement. After several changes
 2 were made to the settlement agreement, on December 30, 2010, Peters
 3 informed Plaintiff's counsel that Flava agreed to sign the settle-
 4 ment agreement without any further changes. Plaintiff's counsel did
 5 not respond to Peters.

6 C. Hot Topic's Position Regarding Settlement Of The Case

7 Hot Topic states, via the Declaration of Donna S. Gin, its
 8 attorney:

9 On November 12, 2009, I received a letter via facsim-
 10 ile from (Plaintiff's counsel's) office offering to
 11 settle the case against Hot Topic... *I verbally*
 12 *countered Plaintiff's offer... sometime on or after*
 13 *November 16, 2009. Our counter-offer was accepted*
 14 *verbally by (Plaintiff's counsel's) office on or*
 15 *around December 1, 2009. On that day, I was told by*
 16 *Kaina Schukei, (Plaintiff's counsel's) senior*
 17 *paralegal that she would send over a draft settlement*
 18 *agreement the following day. Until that point, we*
 19 *had not discussed any of the terms of the settlement*
 20 *agreement except for the dollar amount...*

21 On December 7, 2009, Ms. Schukei responded (to me)
 22 via e-mail that our changes (to the settlement
 23 agreement) were acceptable to Plaintiff's counsel and
 24 that *she would get me signatures shortly.*

25 When Ms. Schukei told me she would "get signatures,"
 26 I assumed she meant she would get the signatures of
 27 Plaintiff Barbara and her attorney Lynn Hubbard
 28 (III), as those were the only signature lines on the
 agreement besides Hot Topic's.

On December 8, 2009, I received via facsimile a copy
 of the settlement agreement which had a signature in
 the blank for Barbara Hubbard. I believed the signa-
 ture on the document was indeed that of Barbara
 Hubbard because I had no reason to believe otherwise.
 I forwarded this document to my client for signa-
 ture...

Hot Topic was dismissed from this action on or about
 January 11, 2010.

Even with all of the foregoing communications, no one
 from (Plaintiff's counsel's) office ever informed me
 of the death of Plaintiff Barbara Hubbard, nor did I
 become aware of the same until long after Hot Topic
 was dismissed from the action. Had I known about
 (Barbara's) death at any time during the negotiation
 of the settlement, I would have immediately halted
 settlement discussions and notified my client of this
 development.

(Declaration of Donna S. Gin re: Plaintiff's Ex Parte Motion to Dismiss at 2-3)(emphasis added).

D. October 12, 2010 OSC Hearing

At the OSC hearing, the Court discussed with counsel the topics enumerated in Section II of this Order. The Court was satisfied with Plaintiff's counsel's explanations regarding several of the topics noted.^{10/} However, the authenticity of Barbara's signature on the Power of Attorney, and the survivability of the Power of Attorney after Barbara's death^{11/} continued to be issues that required further briefing. Therefore, the Court ordered counsel to address those issues in further briefing. A continued OSC hearing was held on January 27, 2011.

E. January 27, 2011 OSC Hearing

Prior to the January 27, 2011 hearing, counsel submitted further briefing required by the Court on October 12, 2010. At the hearing, counsel were given the opportunity to argue their respective positions regarding the authenticity of Barbara's signature and the survivability of the Power of Attorney after Barbara's death.

III

^{10/} While the Court initially and tentatively was satisfied with Plaintiff's counsel's explanation, and was willing to give him "the benefit of the doubt," it became apparent after full and final reflection of the entire record and the case law presented, that Petitioner's counsel did not deserve, nor was he entitled to enjoy, the Court's continued willingness to give him the "benefit of the doubt."

^{11/} In addition to the issues noted above, the following issues also remained unresolved: The imposition of sanctions on Plaintiff's counsel for his conduct in this litigation, whether the Court should report his conduct in this litigation to the State Bar of California, and whether Plaintiff's counsel and his law firm should be disqualified from further representation of parties in litigation matters in this Court.

ANALYSIS

A. Documented Contradictions

Prior to the February 25, 2010 conference, Plaintiff's counsel had not informed any defendant in this case, nor the Court, that Plaintiff had passed away over three months earlier on November 13, 2009. Additionally, Plaintiff's counsel informed the Court of the following:

- that he "heard (his) Mom was gravely ill," leaving the Court with the distinct impression "that Plaintiff's counsel did not personally observe his mother's condition, but was informed by someone else." (OSC Hearing Transcript, October 12, 2010, at 5);
- that Chris Kohler (another of Plaintiff's counsel's clients) or possibly Plaintiff's counsel's father, Lynn, may substitute in as Barbara's successor in interest, leading the Court to believe that no formal decision had yet been made. (OSC Hearing Transcript, October 12, 2010, at 8);
- that "Barbara Hubbard had signed numerous blank settlement agreements (prior to her death)," leading the Court to believe that the signature on the settlement demand and agreement provided to Mr. Peters on behalf of Flava was in fact "the genuine signature of Mrs. Hubbard, Barbara Hubbard." (OSC Hearing Transcript, October 12, 2010, at 12).

However, all of the representations were directly contradicted by Plaintiff's counsel's sworn declaration filed on August 3, 2010, in which he stated:

- He personally observed his mother's fragile condition at her hospital bedside at which time she instructed him to settle

1 the case quickly. (Plaintiff's counsel's Declaration at
 2 paras. 3-10; OSC Hearing Transcript, October 12, 2010, at 5-
 3 6);

4 • As early as November 17, 2009, but certainly no later than
 5 December 8, 2009, Lynn had assumed "unofficial"^{12/} control of
 6 this lawsuit upon Barbara's passing and that Lynn was
 7 "ratifying" settlement agreements. (Plaintiff's counsel's
 8 Declaration at paras. 17-21; OSC Hearing Transcript, October
 9 12, 2010, at 6-10). Nowhere in the Declaration does Plain-
 10 tiff's counsel even mention that Mr. Kohler was being
 11 considered as Barbara's successor in interest.

12 • Barbara did not, in fact, sign numerous blank settlement
 13 agreements, but rather executed a power of attorney giving
 14 Plaintiff's counsel authority to sign a settlement agreement
 15 on her behalf, which was standard and customary practice of
 16 Plaintiff's counsel's law firm. (Plaintiff's counsel's
 17 Declaration at paras. 34-36; OSC Hearing Transcript, October
 18 12, 2010, at 11-12).

19 B. Authenticity of Barbara's Signature

20 At the January 27, 2011 hearing, the Court found that on the
 21 record presented to it at that time, Plaintiff's counsel had failed
 22 to properly authenticate Barbara's signature on the Power of
 23 Attorney. (OSC Hearing Transcript, January 27, 2011, at 4-9).
 24 Therefore, the Court ordered Plaintiff's counsel to file supplemen-
 25 tal declarations of two of Barbara's family members to properly
 26 authenticate Barbara's signature. On February 10, 2011, Plaintiff's

27
 28 ^{12/} "Unofficial" because no Motion for Substitution of Plaintiff had
 been filed.

counsel filed the Supplemental Declarations of Douglas Hubbard and Elora Hubbard, which properly authenticated Barbara's signature.^{13/}

C. Survivability of Power of Attorney^{14/}

It is an elementary rule of law that the relation of attorney and client is terminated by the death of the client..." Mallory v. Rittenhouse, 99 Cal. App. 96, 104 (1929); see also Lanza v. Bank of America National Trust & Savings Assoc., 229 Cal. App. 2d 720, 724 (1964). "Generally, a power of attorney terminates on the death of the principal. People v. Fenderson, 188 Cal. App. 4th 625, 634 (2010); see also California Probate Code § 4152(a)(4); Rest. 3d Agency §3.06 and 3.07.

In Mallory, the court held that the attorney-client relationship is terminated on the death of the client, "but an exception is made in the case of a special contract of employment, such as a specific contract to conduct a suit to final judgment, or some agreement on a fee for the entire case." Mallory at 104. Mallory was cited approvingly in Lanza, supra. In Mallory, the exception was applied to a "contract to conduct a suit to final judgment," which disposed of the whole case.

Plaintiff's counsel argues that Barbara's oral instructions to him were that he was to immediately settle the case for whatever he could get and give the funds to his father, Lynn. Therefore, Barbara's oral instructions created a "specific contract to bring

^{13/} Flava's objection to the Supplemental Declarations of Douglas Hubbard and Elora Hubbard are overruled. Flava's request for an expert handwriting analysis of Barbara's signature is denied.

^{14/} As previously noted, someone other than Barbara signed the Settlement Agreement sent to Peters, pursuant to the Power of Attorney. As noted in footnote 7, Barbara did not sign numerous blank settlement agreements prior to her death, as Plaintiff's counsel originally stated to the Court.

1 (this) suit to final judgment," as quickly as possible. For this
2 reason, the attorney-client relationship did not terminate on
3 Barbara's death.

4 Flava argues that the Mallory exception does not apply
5 because the attorney-client relationship creates an agency relation-
6 ship, wherein the attorney acts as an agent for the client. To
7 support this position, Flava cites Stoll v. Stoll, 5 Cal. 3d 687,
8 692 (1936). The Stoll court held that contract liability may survive
9 the death of a contractor, but the contractor's agent's power to act
10 on behalf of the decedent contractor may not survive the decedent's
11 death. Flava's position is supported by Webster Real Estate v.
12 Rickard, 21 Cal. App 3d 612, 616-617 (1972). Webster dealt with a
13 real estate owner-broker contract in which the owner died before the
14 property was sold. The court held that death of the owner of the
15 property terminated the broker's agency and the authority of the
16 broker to represent the owner in seeking a buyer for the property.
17 The court cited the Restatement Second of Agency, which states: "One
18 cannot act on behalf of a non-existent person." Further, an agency
19 is terminated by the death of the principal. Estate of Friedman, 20
20 Cal. App. 3d 399 (1971); Jay v. Dollarhide, 3 Cal. App. 3d 1001
21 (1970) *superceded by statute on other grounds*; California Civil Code
22 §§ 2355(b) and 2356(a).

23 As a result, Flava concludes that in this case, the agency
24 was created and held for the benefit of Barbara, for her desire that
25 she be able to gain barrier-free access to the stores at Plaza
26 Bonita. The agency was not created for the benefit of Plaintiff's
27 counsel. As a result of Barbara's death, the agency terminated and
28 Plaintiff's counsel did not have the authority to act on Barbara's

1 behalf. Consequently, Plaintiff's counsel had no authority to sign
2 settlement agreements on Barbara's behalf after her death. The Court
3 agrees.

4 The Mallory exception may apply if the Court views Plain-
5 tiff's counsel's acts in settling Barbara's case, as bringing the
6 suit "to final judgment." However, to bring a case to "final
7 judgment," is obviously different from bringing a case to settle-
8 ment, where a judgment is not entered. Nevertheless, a fair reading
9 of Mallory might suggest that bringing a case to "final judgment"
10 may be equivalent to ending the case by settlement. However, neither
11 Plaintiff's counsel nor Flava provided the Court with any authority,
12 nor could the Court find any authority, that defines whether
13 bringing a case to "final judgment" is the equivalent of ending a
14 case by settlement. Therefore, the Court does not adopt the view
15 that the two ways of ending a case, as noted above, are equivalent.

16 Regardless of whether "final judgment" and "settlement" are
17 functional equivalents or whether the attorney-client relationship
18 survived Barbara's death, the Mallory exception does not excuse or
19 justify Plaintiff's counsel's failure to inform opposing counsel
20 that Barbara had died, that the signature on the settlement
21 agreement was not hers, and that Plaintiff's counsel was relying on
22 Mallory for authority to sign the settlement agreement and bring the
23 case to conclusion. In other words, Plaintiff's counsel's conduct
24 lacked the transparency and candor expected of counsel practicing
25 before this Court.

26 D. The Appropriateness of Signing Barbara's Name To The
27 Settlement Agreement

28 Even assuming the agency relationship extended beyond
Barbara's death, Flava argues that the Mallory exception does not

1 support Plaintiff's counsel's signing Barbara's name on an agreement
2 without informing Flava's counsel that the signature was not
3 Barbara's signature.

4 Flava goes further by accusing Plaintiff's counsel of forgery
5 of Barbara's name. It cites to U.S. v. Price, 655 F.2d 958, 960 (9th
6 Cir. 1981), which states that forgery is a:

7 "false making, with intent to defraud, of a document
8 which is not what it purports to be, as distinct from
9 a document which is genuine but nevertheless contains
10 a term or representation known to be false." "A
11 document signed by a third person using the signature
12 of another is a forgery..." "Forgery contemplates a
13 writing which falsely purports to be the writing of
14 another person than the actual maker..." "Signing
one's own name with the intent that the writing be
received as written by another person, or *impersonat-*
ing another in the signature of the instrument... or
signing in such a way as to make the writing purport
to be that of another... are all acts of forgery."
(citations omitted)(emphasis added).

15 Therefore, Flava argues that Plaintiff's counsel's signing
16 Barbara's name on settlement agreements, without informing its
17 counsel that the signature on the document was not, in fact,
18 Barbara's signature, constitutes forgery.

19 Flava goes even farther by accusing Plaintiff's counsel of
20 committing fraud. Extrinsic fraud is the failure to disclose
21 material information. Estate of Anderson, 149 Cal. App. 3d 336
22 (1983). The fraud need not be completed to establish it. Intent to
23 defraud is required. People v. Russell, 214 Cal. App. 2d 445 (1963).
24 It is not necessary that no actual harm result from the fraud to
25 merit disciplinary action. Resnik v. Cal. State Bar, 1 Cal. 3d 198
26 (1969).

27 Flava alleges that it acted upon the signed settlement
28 documents as having Barbara's genuine signature on them. One of the

1 Defendants (Hot Topic), paid money to settle its action with
2 Barbara, in reliance that Barbara actually signed the settlement
3 agreement. Flava asserts that it incurred significant time and
4 expense in believing the same thing and acting pursuant thereto.

5 In Hallinan v. State Bar of Cal., 33 Cal. 2d 246 (1948),
6 defense counsel in that case explicitly requested that plaintiff
7 personally sign a release as part of the settlement of the case.
8 However, the plaintiff's attorney instead signed the release under
9 a power of attorney to do so, but did not inform opposing counsel
10 that the signature was that of the attorney, not the plaintiff. The
11 court held that an attorney who puts his client's signature on a
12 release, with the power of attorney to do so, without informing
13 opposing counsel that the signature is not the client's signature,
14 is deceptive and punishable conduct. The punishable conduct was not
15 that the attorney put his client's signature on the release, because
16 he had the authority to do so. Rather, the punishable conduct was
17 the failure to inform defense counsel that the signature on the
18 release was not his client's signature, but his own.^{15/} Hallinan has
19 been followed for the same purpose and reasoning in Aronin v. Cal.
20 State Bar, 52 Cal. 3d 276, 286-287 (1990).

21 The Court finds that the situation in Hallinan is analogous
22 to the situation presented here. Plaintiff's attorney in Hallinan
23 had a power of attorney from his client to sign documents on the
24 client's behalf. The attorney signed the client's signature on a
25 release and did not inform defendant's counsel that the signature on
26 the release was not the client's signature, despite the defendant's

27
28 ^{15/} In Hallinan, the attorney was punished with a three month suspension
from the practice of law.

1 attorney's request that the client sign the release.^{16/} The court held
2 that the attorney's conduct in signing the release on behalf of his
3 client, *without informing defense counsel that the signature on the*
4 *release was not his client's signature*, was deceptive and punishable
5 conduct. The Court noted that the attorney's signing of his client's
6 name on the release was not the objectionable conduct. Rather, *not*
7 *informing* defense counsel that the signature on the release was not
8 the client's signature was objectionable.

9 The Court concludes that Plaintiff's counsel (or someone at
10 his direction) placed Barbara's signature on the Settlement
11 Agreements with Flava and Hot Topic under an expired power of
12 attorney to do so, but *without informing* Flava's or Hot Topic's
13 counsel that he had done so. Plaintiff's counsel's conduct in *not*
14 *informing* Flava's and Hot Topic's counsel that the signatures on the
15 settlement agreements were not, in fact, Barbara's signature, was
16
17
18
19
20
21
22
23

24
25 ^{16/} The fact that defendant's counsel in Hallinan specifically requested
26 that the client sign the release is one of the only distinguishing
27 factors from the situation presented here. In this case, there was
28 no specific request that Barbara personally sign the Settlement
Agreement. Rather, Flava (and Hot Topic) tacitly understood that
Barbara had personally signed the Settlement Agreements, by viewing
what they believed to be Barbara's original signature on the
Settlement Agreements, and by relying on communications with
Plaintiff's counsel's firm which created and reinforced this false
impression.

1 deceptive and punishable conduct. "This was an intentional deception
2 and thus constituted moral turpitude." Aronin, 52 Cal 3d at 287.^{17/18/}

3 ^{17/} The Court finds that Plaintiff's counsel may have violated the
4 following statutes and rules:
California Business & Professions Code §6106, which states:
5 The commission of any act involving moral turpitude, dishonesty or
6 corruption, whether the act is committed in the course of his
7 relations as an attorney or otherwise, and whether the act is a
8 felony or misdemeanor or not, constitutes a cause for disbarment or
9 suspension.

If the act constitutes a felony or misdemeanor, conviction thereof
in a criminal proceeding is not a condition precedent to disbarment
or suspension from practice therefor.

California Rule of Professional Conduct 3-110, which states in
pertinent part:

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to
correct a false statement of material fact or law previously made to
the tribunal by the lawyer...

California Rule of Professional Conduct 5-220, which states:

A member shall not suppress any evidence that the member or the
member's client has a legal obligation to reveal or to produce.

American Bar Association Model Rule of Professional Conduct 3.3,
which states in pertinent part:

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to
correct a false statement of material fact or law previously made to
the tribunal by the lawyer;...

(c) The duties stated in paragraphs (a)... continue to the
conclusion of the proceeding...

American Bar Association Model Rule of Professional Conduct 4.1,
which states in pertinent part:

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third
person;...

American Bar Association Model Rule of Professional Conduct 7.1,
which states:

A lawyer shall not make a false or misleading communication about
the lawyer or the lawyer's services. A communication is false or
misleading if it contains a material misrepresentation of fact or
law, or omits a fact necessary to make the statement considered as
a whole not materially misleading.

American Bar Association Model Rule of Professional Conduct 8.4,
which states pertinent part:

It is professional misconduct for a lawyer to:

...
(c) engage in conduct involving dishonesty, fraud, deceit or
misrepresentation;

(continued)

(d) engage in conduct that is prejudicial to the administration of
justice;...

Southern District of California Local Rule 83.4 which states in

IV

SANCTIONS

There are two sources of authority under which a court can sanction a party for improper conduct: (1) 28 U.S.C. § 1927 and (2) the inherent power of federal courts to levy sanctions in response to abusive litigation practices. Lahiri v. Universal Music and Video Distribution Corp., 606 F.3d 1216, 1219 (9th Cir. 2010); B.K.B. v. Maui Police Dept., 276 F.3d 1091, 1107-1108 (9th Cir. 2002).

1. 28 U.S.C. § 1927

28 U.S.C.A. § 1927 states:

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

Imposition of sanctions under 28 U.S.C. § 1927 (hereafter "§ 1927") requires a finding of recklessness or bad faith on the part of the attorney sanctioned. B.K.B., 276 F.3d at 1107; Lahiri, 606 F.3d at 1219.

pertinent part:

...
b. Standards of Professional Conduct. Every member of the bar of this court and any attorney permitted to practice in this court must be familiar with and comply with the standards of professional conduct required of members of the State Bar of California, and decisions of any court applicable professional conduct which are now adopted as standards of professional conduct of this court. This specification will not be interpreted to be exhaustive of the standards of professional conduct. In that connection, the Code of Professional Responsibility of the American Bar Association should be noted. No attorney permitted to practice before this court will engage in any conduct which degrades or impugns the integrity of the court or in any manner interferes with the administration of justice within the Court.

^{18/} The Court declines to address whether Plaintiff's counsel committed perjury or fraud, because these issues were not fully briefed by counsel. The Court leaves to others whether to investigate Plaintiff's allegations in these regards.

1 The plain language of § 1927 establishes that, when a court
 2 issues a sanctions award, it may include the costs, expenses and
 3 attorney's fees that were incurred by the aggrieved party by the
 4 sanctionable conduct. Sanctions imposed under § 1927 "must bear a
 5 financial nexus to the excess proceedings and may not exceed the
 6 "costs, expenses and attorney's fees reasonably incurred because of
 7 the sanctionable conduct." Norelus v. Denny's Inc., 628 F.3d 1270,
 8 1297 (11th Cir. 2010). Several courts have held that a sanctions
 9 award under § 1927 may include the costs arising from the sanctions
 10 proceedings themselves. See In re Tutu Wells Contamination Litiga-
 11 tion, 120 F. 3d 368, 387-388 n. 21 (3rd Cir. 1997) *overruled on other*
 12 *grounds by Comuso v. Nat. R.R. Passenger Corp.*, 267 F.3d 331, 331
 13 (3rd Cir. 2001); Brandt v. Schal Assoc., Inc., 960 F.2d 640, 649-651
 14 (7th Cir. 1992); In re Stauffer Seeds, Inc., 817 F. 2d 47, 50 (8th
 15 Cir. 1987).

16 Further, exclusion from a sanctions award the costs incurred
 17 in obtaining the award undermines the purposes of providing for
 18 sanctions. "The time, effort and money a party must spend to get
 19 another party sanctioned... is part of (the) harm caused by the
 20 other party's wrongful conduct." Norelus, 628 F.3d at 1298.
 21 Moreover, exclusion from a sanctions award undermines the goal of
 22 deterring future similar sanctionable conduct because it would
 23 discourage the aggrieved party from pursuing sanctions. Id., at
 24 1298-1299.

25 2. Court's Inherent Powers

26 Under its "inherent powers," a district court may award
 27 sanctions in the form of attorneys' fees against a party or counsel
 28 who acts "in bad faith, vexatiously, wantonly, or for oppressive

reasons." Primus Auto. Fin. Servs., Inc. v. Batarse, 115 F.3d 644, 648 (9th Cir. 1997); Adams v. AllianceOne, Inc., 2011 WL 2066617 at *5 (S.D. Cal. 2011). "This inherent power derives from the lawyer's role as an officer of the court which granted admission." In re Snyder, 472 U.S. 634, 643 (1985). Under this inherent power, and unlike statutory sanctions provisions, the Court may sanction a "broad range of improper litigation tactics." Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1196 (9th Cir. 2003); Adams, supra, at *5.

Before awarding such sanctions, the Court must make an express finding that the sanctioned party's behavior "constituted or was tantamount to bad faith." Roadway Express v. Piper, 447 U.S. 752, 767 (1980), *superceded by statute on other grounds as recognized in* 749 F.2d 217, 222 n.4 (5th Cir. 1984)); Lahiri, 606 F.3d at 1219; B.K.B., 276 F.3d at 1108. "[A] finding of bad faith 'does not require that the legal and factual basis for the action prove totally frivolous; where a litigant is substantially motivated by vindictiveness, obduracy, or mala fides, the assertion of a colorable claim will not bar the assessment of attorney's fees.'" Id., at 1108 [quoting Fink v. Gomez, 239 F.3d 989, 992 (9th Cir. 2001)]. "(S)anctions are available if the court specifically finds bad faith conduct or conduct tantamount to bad faith. Sanctions are available for a variety of types of willful actions, including recklessness when combined with an additional factor such as improper purpose." Id., at 1108 (quoting Fink, 239 F.3d at 994). Bad faith can consist of "delaying or disrupting the litigation." M.M. v. Lafayette School Dist., 2011 WL 830261 (N.D. Cal. 2011) [quoting Hutto v. Finney, 437 U.S. 678, 689 n.14 (1978)].

1 The focus of the bad faith inquiry is the sanctioned party's
2 abuse of the judicial process. Roadway Express, 447 U.S. at 765-66.
3 The bad faith requirement ensures that the district court's exercise
4 of its broad power is properly restrained, and "preserves a balance
5 between protecting the court's integrity and encouraging meritorious
6 arguments." Id.; Adams, supra at *5.

7 Moreover, "the amount of an inherent powers sanction is meant
8 to do something very different than provide a substantive remedy to
9 an aggrieved party. An inherent powers sanction is meant to
10 'vindicate judicial authority.'" Mark Indus. v. Sea Captain's
11 Choice, 50 F.3d 730, 733 (9th Cir. 1995) (quoting Chambers v. NASCO,
12 Inc., 501 U.S. 32, 55 (1991). Nonetheless, the amount of monetary
13 sanctions based on attorneys' fees must be "reasonable." Brown v.
14 Baden (In re Yagman), 796 F.2d 1165, 1184-85 (9th Cir. 1986) *amended*
15 *on other grounds by* 803 F.2d 1085 (9th Cir. 1986); Adams, supra, at
16 *6.

17 Here, the Court finds that Plaintiff's counsel's conduct in
18 this litigation, as discussed in this Order, warrants the imposition
19 of sanctions under §1927 and its inherent authority. Specifically,
20 Plaintiff's counsel submitted to counsel for Flava and Hot Topic a
21 proposed settlement agreement that was represented to contain
22 Barbara's genuine signature, when the signature was not, in fact,
23 Barbara's signature. In presenting the settlement agreement to
24 counsel for Flava and Hot Topic, Plaintiff's counsel failed to
25 inform counsel for Flava, Hot Topic and the Court that the signature
26 on the settlement agreement was not that of Barbara, but instead,
27 penned by someone else.

28

1 The Court notes that Plaintiff's counsel first represented to
2 it at the February 25, 2010 Settlement Disposition Conference that
3 Barbara had signed numerous blank settlement agreements prior to her
4 death. This representation could have been made for only one
5 purpose: Plaintiff's counsel wanted the Court to believe that
6 Barbara had signed the proposed settlement agreement prior to her
7 death. However, when Flava's counsel informed the Court that the
8 proposed settlement agreement he had received from Plaintiff's
9 counsel was dated after Barbara's death, Plaintiff's counsel was
10 apparently forced to provide another explanation. It stretches
11 credulity to believe that Plaintiff's counsel simply and honestly
12 made several mistakes of fact on February 25, 2010. The circumstan-
13 tial evidence points to a different conclusion. However, the
14 resolution of the propriety of sanctions does not turn on a
15 resolution of the *mens rea* behind the February 25, 2010 misrepresen-
16 tations. Whether Plaintiff's counsel was intentionally deceptive or
17 honestly mistaken on February 25, 2010, one thing is undisputable:
18 Plaintiff's counsel informed no one that Barbara had died while he
19 continued to try to settle this action against Flava and Hot Topic
20 while at the same time leading opposing counsel to believe Barbara
21 was still alive and that she signed the settlement agreement.
22 Plaintiff's counsel's failure to inform all counsel concerned that
23 the signature on the proposed settlement agreements was not, in
24 fact, Barbara's signature, would have never come to light absent
25 Flava's counsel's presentation to the Court of Plaintiff's counsel's
26 conduct.

27 After Flava's counsel discovered that the signature on the
28 proposed settlement agreement that he received from Plaintiff's

1 counsel did not bear Barbara's genuine signature, he brought this
2 fact to the attention of the Court. Since the Court was presented
3 with Plaintiff's counsel's potentially objectionable conduct at that
4 time, the Court was required to have Plaintiff's counsel explain his
5 conduct with respect to Barbara's signature appearing on documents
6 dated after her death.

7 The Court finds that Plaintiff's counsel's conduct in this
8 regard, and the settlement agreements he submitted to Flava's and
9 Hot Topic's counsel and the Court, constitute recklessness and were
10 done in bad faith. Had Plaintiff's counsel been candid with counsel
11 and the Court, the briefing requested by the Court by both Plain-
12 tiff's counsel and Flava's counsel, and the hearings held by the
13 Court, would not have been necessary. As a result, the Court
14 concludes that Plaintiff's counsel unreasonably and vexatiously
15 multiplied the proceedings in this case.

16 Further, the Court concludes that Plaintiff's counsel's
17 conduct, as discussed in this Order, was done for the purpose of
18 leading opposing counsel to believe that the proposed settlement
19 agreements received by them contained Barbara's genuine signature,
20 when in fact, they did not. Plaintiff's counsel's conduct disrupted
21 the proceedings in this litigation and has delayed its conclusion.

22 Therefore, the Court concludes that any sanctions to be
23 imposed on Plaintiff's counsel will suffice to deter Plaintiff's
24 counsel from repeating the conduct as discussed in this Order.

25 As a result, on or before June 27, 2011, Flava's counsel
26 shall submit to the Court, for *in camera* review, his billing
27 statements for all work and expenses incurred that directly resulted
28 from Plaintiff's counsel's submitting to him a proposed settlement

1 agreement in this case which purported to bear Barbara's genuine
2 signature, but was not, in fact, Barbara's genuine signature. After
3 the Court reviews Flava's counsel's billing statements *in camera*, it
4 will issue appropriate monetary sanctions against Plaintiff's
5 counsel.

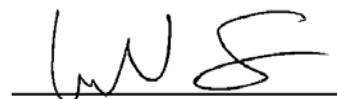
6 D. Report of Conduct to the State Bar of California

7 Since Plaintiff's counsel's conduct, as discussed in this
8 order, *may have* violated statutes and Rules of Professional Conduct,
9 (see fn. 17), the Court will report Plaintiff's counsel's conduct to
10 the State Bar of California.

11 E. Disqualification From Further Representation In This
12 Court

13 In footnote 17 of this Order, the Court noted that Plain-
14 tiff's counsel's conduct in this litigation *may have* violated
15 statutes and Rules of Professional Conduct. At this time, the Court
16 declines to determine whether Plaintiff's counsel should be
17 disqualified from further representation in this Court. However,
18 pursuant to Local Rule 83.5, the Court refers Plaintiff's counsel to
19 the Standing Committee on Discipline.

20 DATED: June 13, 2011

21
22 

23 Hon. William V. Gallo
24 U.S. Magistrate Judge
25
26
27
28